FILE COPY

Office - Supreme Court, U. S.
FILED
SEP 21 1938
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 368

THE CITY OF LOS ANGELES AND RAY L. CHESEBRO,
Appellants,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

MOTION TO DISMISS OR AFFIRM.

J. H. O'CONNOR,
County Counsel;
H. W. KENNEDY,
W. B. McKESSON,
Deputy County Counsel,
Counsel for Appellees.

U. T. CLOTFELTER,
F. RAY BENNETT,
Of Counsel.

INDEX.

Subject Index.

	Page
Motion to dismiss or affirm	1
Argument in support of motion	2
Constitutional provisions involved	2
Statutory provisions involved	2
Nature of the case	3
As to appellant City of Los Angeles, no Federal question is involved	4
The Federal question, if any, is foreclosed by previous decisions	6
The questions involved are too unsubstantial to justify the Supreme Court taking jurisdiction	7
Where the decision rests upon a non-Federal ground, the Supreme Court will not entertain jurisdiction even though a Federal question is involved	8

Table of Cases Cited.

American Railway Express Co. v. *Kentucky*, 273 U. S. 269	8
A., T. & S. F. Railway v. *Railroad Commission*, 283 U. S. 380	8
Barnes v. *District of Columbia*, 91 U. S. 540	5
Barber v. *Galloway*, 195 Cal. 1	9
Breiholz v. *Pocahontas County*, 257 U. S. 118	7
Bulkeley v. *Williams*, 68 Conn. 131, 48 L. R. A. 465	5
City of New Orleans v. *New Orleans Water Works Co.*, 142 U. S. 79	5
City of Pawhuska v. *Pawhuska Oil & Gas Co.*, 250 U. S. 394	6
City of Trenton v. *State of New Jersey*, 262 U. S. 182	5

Page

City of Tulsa v. *Oklahoma Natural Gas Co.*, 4 F. (2d) 399 5
Davidson v. *New Orleans*, 96 U. S. 97 7
De Saussuri v. *Gaillard*, 127 U. S. 216 8
Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112 7
French v. *Barber Asphalt Paving Co.*, 181 U. S. 324 7
Hagar v. *Reclamation District*, 111 U. S. 701 7
Houck v. *Little River Drainage District*, 239 U. S. 254 6
Hunter v. *City of Pittsburgh*, 207 U. S. 161 5
Johnson v. *City of San Diego*, 109 Cal. 468 8
Live Oak Water Users Association v. *Railroad Commission*, 269 U. S. 355 8
Los Angeles County Flood Control District v. *Hamilton*, 177 Cal. 119 8
Miller & Lux v. *Sacramento-San Joaquin Irrigation District*, 256 U. S. 129 7
Myles Salt Co. v. *Board of Commissioners*, 239 U. S. 478 7
Palo Verde Irrigation District v. *Seeley*, 198 Cal. 477 8
Police Jury v. *Shreveport*, 5 La. Ann. 661 5
Rouch v. *Himmelberger*, 305 Mo. 70, 264 S. W. 658 7
St. Louis v. *Shields*, 52 Mo. 351 5
San Christina Investment Co. v. *San Francisco*, 167 Cal. 762 8
Seattle v. *Kelleher*, 195 U. S. 351 8
Spencer v. *Merchant*, 125 U. S. 345 7
Utley v. *City of St. Petersburg*, 292 U. S. 106 8
Valley Farms Co. v. *County of Westchester*, 261 U. S. 155 10
Wagner v. *Leser*, 239 U. S. 207 7
Walston v. *Nevin*, 128 U. S. 578 7

STATUTES CITED.

California Constitution, Article XI, Section 13 ..... 2, 9
Constitution of the United States, 14th Amendment 4, 5
Statutes of California, 1915, p. 1502, Section 2 ..... 3, 9
Section 16 3
Statutes of California, 1937, p. 1763, Section 13½ 3, 9, 10

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 368

THE CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, AND RAY L. CHESEBRO,

Appellants,

vs.

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES AS THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT; JOHN ANSON FORD, LELAND M. FORD, HERBERT C. LEGG, ROGER W. JESSUP AND GORDON L. McDONOUGH, AS MEMBERS OF AND CONSTITUTING THE BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, AND EX OFFICIO THE BOARD OF SUPERVISORS OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT,

Appellees.

MAKING AGAINST JURISDICTION OF THE COURT.

To the Chief Justice and Associate Justices of the Supreme Court of the United States:

The appellees move to dismiss the appeal or for an order affirming judgment of the Supreme Court of the State of

California. These motions are based upon the following grounds:

1. As to appellant City of Los Angeles, no Federal question is involved.

2. Federal questions are foreclosed by previous decisions.

3. Questions involved are too unsubstantial to justify Supreme Court taking jurisdiction.

4. Determination of non-Federal questions by California Supreme Court sufficient to support its decision.

ARGUMENT IN SUPPORT OF MOTION.

I.

Constitutional Provisions Involved.

Section 13 of Article XI of the California Constitution provides:

> "The legislature shall not delegate to any special commission, private corporation, company, association or individual any power to make, control, appropriate, supervise, or in any way interfere with any county, city, town or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments or perform any municipal function whatever, except that the legislature shall have power to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irrigation districts, reclamation districts or drainage districts, organized or existing under any law of this state."

II.

Statutory Provisions Involved.

The California Legislature, by Statute 1915, page 1502, passed the Los Angeles County Flood Control District Act. This act created a flood control district within the boundaries

designated therein. Section 2 of the act outlined the objects and purposes—in general to provide for the control and conservation of flood, storm and other waste water of the district. The district was given the usual corporate powers of a limited taxing district. Section 16 of the act provided, in part:

> "Said board of supervisors shall have power to do all work and to construct and acquire all improvements necessary or useful for carrying out any of the purposes of this act; and said board of supervisors shall have power to acquire either within or without the boundaries of said district, by purchase, condemnation, donation or by other lawful means in the name of said district, from private persons, corporations, reclamation districts, swamp land districts, levee districts, protection districts, drainage districts, irrigation districts, or other public corporations or agencies or districts, all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of this act; • • • to compensate any • • • drainage district, • • • for any right of way, easement or property taken over or acquired by said Los Angeles County flood control district as a part of its work of flood control or conservation or protection provided for in this act, • • • ."

Section 13½ was added to the act by the Statutes of 1937, page 1763. This statute is set forth in full in appellants' Statement as to Jurisdiction.

III.

Nature of the Case.

Appellants filed a petition for writ of mandate in the Supreme Court of California, said petition directed to appellees. The alleged grounds for the right to the writ were that the legislature, by the passage of Statutes of 1937, page 1763, deprived appellants of their property without due process of law. As basis for this contention, appellants

asserted they were owners of taxable property which would be assessed to pay the cost of acquiring certain drainage improvements, storm drain improvements and drainage systems accepted by the governing board of the Los Angeles County Flood Control District pursuant to said statute. Appellants admitted that they were property owners within said flood control district and that said district was organized by the legislature. An application to the Supreme Court to review the decision of the California Supreme Court presents these questions:

1. If a State constitution gives the legislature plenary power over drainage districts, is a Federal question raised by the passage of an act wherein the legislature exercises the power granted to it over such district?

2. Is a Federal question presented where an act of the State legislature seeks to grant additional powers to the governing body of a special assessment district which the legislature itself has created?

3. Does the due process clause of the 14th Amendment require a hearing before an assessment can be levied against property within an assessment district, if the district was formed by the legislature and the method of assessing the property prescribed by that body?

4. Is a Federal question presented where the legislature impliedly determines that certain property is useful or necessary for the purposes of a district over which the legislature has plenary power, before such property can be acquired by such district?

IV.

As to Appellant City of Los Angeles, No Federal Question is Involved.

(a) Since a city is organized under state authority and its powers, rights and property are subject to State control,

it cannot invoke the protection of the 14th Amendment against a taking of its property by an act of the legislature.

(1) "The power of the state, unrestrained by the contract clause or the 14th Amendment, over the rights and property of cities held and used for 'governmental purposes,' cannot be questioned. • • • In none of these cases was any power, right or property of a city or other political subdivision held to be protected by the contract clause or the 14th Amendment. This court has never held that these subdivisions may invoke such restraints upon the powers of the state."

City of Trenton v. *State of New Jersey*, 262 U. S. 182.

(2) "The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the State constitution, may do as it will, unrestrained by any provision of the Constitution of the United States."

Hunter v. *City of Pittsburgh*, 207 U. S. 161.

(3) Other authorities to same effect

City of New Orleans v. *New Orleans Water Works Co.*, 142 U. S. 79;

Barnes v. *District of Columbia*, 91 U. S. 540;

City of Tulsa v. *Oklahoma Natural Gas Co.*, 4 F. (2d) 399;

Bulkeley v. *Williams*, 68 Conn. 131 (48 L. R. A. 465);

St. Louis v. *Shields*, 52 Mo. 351;

Police Jury v. *Shreveport*, 5 La. Ann. 661.

(b) Decisions of State courts on relation of rights of city and State are matters of local law not subject to review by the Supreme Court.

> "Thus the whole controversy is as to which of two existing agencies or arms of the state government is authorized for the time being to exercise in the public interest a particular power, obviously governmental, subject to which the franchise confessedly was granted. In this no question under the contract laws of the Constitution of the United States is involved, but only a question of local law, the decision of which by the Supreme Court of the state is final."
>
> *City of Pawhuska* v. *Pawhuska Oil & Gas Co.*, 250 U. S. 394.

V.

The Federal Question, if Any, is Foreclosed by Previous Decisions.

(a) Since the legislature had power to authorize the acceptance of the drainage improvements by the flood control district and impose upon that district the burden of paying for such improvements, it also had the power to authorize the governing body of the district to accept such transfer without hearing.

> (1) "The legislature, unless restricted with a state constitution, can create such districts directly • • • and with respect to districts thus formed, whether by the legislature directly or in an appropriate proceeding under its authority, the legislature may itself fix the basis of taxation or assessment; that is, it may define the apportionment of the burden, and its action cannot be assailed under the 14th Amendment unless it is palpably arbitrary and a plain abuse."
>
> *Houck* v. *Little River Drainage District*, 239 U. S. 254.

> (2) "The only possible source of objection remaining is the committing to the board of supervisors the power

to determine, without notice and hearing, when repairs are necessary and the extent of them. But these are details of state administration with which the Federal authority will not interfere, except, possibly, to prevent confiscation or spoilation, of which there is no suggestion in this case."

Breiholz v. *Pocahontas County*, 257 U. S. 118.

(3) Other authorities on the same point
Rouch v. *Himmelberger*, 305 Mo. 70 (264 S. W. 658);
Davidson v. *New Orleans*, 96 U. S. 97.

VI.

The Questions Involved are Too Unsubstantial to Justify the Supreme Court Taking Jurisdiction.

(a) The flood control district was created by the legislature and therefore property owners within it will not be heard to say that their property is taken without due process of law.

Hagar v. *Reclamation District*, 111 U. S. 701;
Spencer v. *Merchant*, 125 U. S. 345;
Fallbrook Irrigation District v. *Bradley*, 164 U. S. 112;
Walston v. *Nevin*, 128 U. S. 578;
French v. *Barber Asphalt Paving Co.*, 181 U. S. 324;
Wagner v. *Leser*, 239 U. S. 207;
Houck v. *Little River Drainage District*, *supra*.

(b) When the legislature forms a special assessment district and designates its boundaries, property owners in such a district cannot assail the action of the legislature unless such action is palpably arbitrary and a plain abuse of power.

Myles Salt Co. v. *Board of Commissioners*, 239 U. S. 478;
Houck v. *Little River Drainage District*, *supra*;
Miller & Lux v. *Sacramento-San Joaquin Irrigation District*, 256 U. S. 129.

(c) It is not a violation of the 14th Amendment to cast upon a special assessment district the burden of paying for improvements previously constructed.

Seattle v. *Kelleher*, 195 U. S. 351;
Wagner v. *Leser*, *supra*.

(d) The statute in question was an implied finding by the legislature that the drainage works authorized to be accepted by the flood control district were useful and necessary for flood control purposes.

San Christina Investment Co. v. *San Francisco*, 167 Cal. 762;
Los Angeles County Flood Control District v. *Hamilton*, 177 Cal. 119;
Johnson v. *City of San Diego*, 109 Cal. 468;
Palo Verde Irrigation District v. *Seeley*, 198 Cal. 477.

VII.

Where the Decision Rests Upon a Non-Federal Ground, the Supreme Court Will Not Entertain Jurisdiction Even Though a Federal Question is Involved.

Live Oak Water Users Ass'n v. *Railroad Commission*, 269 U. S. 355;
De Saussuri v. *Gaillard*, 127 U. S. 216;
American Railway Express Co. v. *Kentucky*, 273 U. S. 269;
A., T. & S. F. Railway v. *Railroad Commission*, 283 U. S. 380;
Utley v. *City of St. Petersburg*, 292 U. S. 106.

(a) The California Constitution has given the legislature plenary power over irrigation districts, reclamation (flood control) districts, and drainage districts.

"* * * The legislature shall have power to provide for the supervision, regulation and conduct, in such manner as it may determine, of the affairs of irriga-

tion districts, reclamation districts or drainage districts, organized or existing under any law of this state."

Sec. 13, Art. XI, State Constitution.

Palo Verde Irrigation District v. *Seeley, supra; Barber* v. *Galloway,* 195 Cal. 1.

(b) The legislature organized the flood control district, fixed its boundaries and prescribed its powers, one of which was to acquire the works of drainage districts.

"Said Board of Supervisors shall have power * * * to acquire * * * from * * * drainage districts * * * all lands, rights of way, easements, property or materials necessary or useful for carrying out any of the purposes of this act * * *."

Sec. 16, California Stats. 1915, p. 1502.

(c) The opinion in question decided that Section 13½ (Stats. 1917, p. 1763) was an implied finding by the legislature that the drainage improvements therein named would serve a necessary and useful flood control purpose.

"The petitioners do not question the propriety of a legislative finding that the designated improvements would be so beneficial. They complain of the absence of an express declaration in that regard. But from the import of Section 13½ the legislature must be deemed to have exercised its plenary power to make such a finding. That section is not construed as granting a general power to the boards of supervisors to acquire properties for the use of the district. It is rather a special declaration that it may acquire on behalf of the flood control district certain designated properties, namely, drainage works and improvements and systems constructed prior to January 1, 1937, by certain classes of drainage districts within the flood control district. This particularity of description of the improvements and property authorized to be accepted by the district presupposes a prior inquiry and investigation on the part of the legislature and a finding by it that such designated improvements will be useful for

the purposes of the district and beneficial to the ter
tory comprising the flood control district. * * * In t
matter of the acquisition of the property described
Section 13½, the legislature has itself decided the u
fulness of the property to the purposes of the flood c
trol district * * *."

(d) After the district was legally organized by the leg
lature, that body had the power to impose upon the distr
the burden of paying for improvements which the legis
ture impliedly found were of benefit to the property own
in the district.

Valley Farms Co. v. *County of Westchester*, 261 U.
155;
Rouch v. *Himmelberger, supra.*

(e) Giving to the governing body of the flood control d
trict the power to accept drainage improvements which t
legislature had found were useful, beneficial and necessa
for the purposes of the district did not violate the 14
Amendment.

Breiholz v. *Pocahontas County, supra.*

(f) The California decisions have upheld the right of t
legislature of that State to transfer to a special assessme
district the outstanding bonded indebtedness of smal
districts lying within such larger district; this is a questi
of local law and the Supreme Court must accept the int
pretation by the State court.

Johnson v. *City of San Diego, supra;*
Palo Verde Irrigation District v. *Seeley, supra;*
Barber v. *Galloway, supra.*

For the foregoing reasons appellees respectfully subm
that the Supreme Court of the United States should dism
the appeal because there is no Federal question involved
if it finds that there is a Federal question or if it conclud

dismissal cannot be granted, that it affirm the judgment of the California Supreme Court.

Respectfully submitted,

J. H. O'Connor,
County Counsel;
H. W. Kennedy,
W. B. McKesson,
Deputies County Counsel,
Counsel for Appellees.

U. T. Clotfelter,
F. Ray Bennett,
Of Counsel.

(7536)